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EXAMINER

NORTON, JENNIFER L

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GIANPIERO SANTACATTERINA, MATTEO SANTINATO,
ETTORE ARIONE, and ROCCO PETRIGLIANO

Appeal 2009-005083
Application 10/757,891
Technology Center 2100

Decided: May 14, 2010

Before JOSEPH L. DIXON, HOWARD B. BLANKENSHIP, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-14, which are all of the claims in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Invention

Appellants' invention relates to a process for managing and curtailing power demand of appliances. The process assesses, for each appliance, an energy consumption profile corresponding to its setting. The energy consumption profiles are compared in order to check if their sum leads to one or more peaks in power demand, and one or more new energy consumption profiles are provided in order to level the total power consumed by the appliances. Abstract.

Representative Claim

1. A process for managing total power absorbed of one or more appliances, the process comprising the steps of:
 - assessing for each appliance an energy consumption profile of the one or more appliances corresponding to its setting;
 - summing the energy consumption profiles to determine if their sum leads to one or more peaks in power demand; and
 - providing one or more new energy consumption profiles to the one or more appliances for leveling the total power absorbed by the one or more appliances.

Prior Art

| | | |
|----------|--------------|---------------|
| Culp | 4,612,619 | Sep. 16, 1986 |
| Ehlers | 5,572,438 | Nov. 5, 1996 |
| Nierlich | 6,519,509 B1 | Feb. 11, 2003 |

Examiner's Rejections

Claims 1, 2, 4, 6, 7, 9, and 11-14 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ehlers.

Claims 3 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ehlers and Culp.

Claims 5 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ehlers and Nierlich.

Claim Groupings

In view of Appellants' arguments in the Appeal Brief, we will decide the appeal on the basis of claims 1, 3, and 5. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUES

(1) Have Appellants shown that the Examiner erred in finding that Ehlers describes an “energy consumption profile” as recited in claim 1?

(2) Have Appellants shown that the Examiner erred in finding that replacing the on and off criteria of Ehlers with the on and off criteria of Culp was obvious to one of ordinary skill at the time of invention?

(3) Have Appellants shown that the Examiner erred in finding that modifying the energy management system of Ehlers to include the future energy consumption profiles of Nierlich was obvious to one of ordinary skill in the art at the time of invention?

FINDINGS OF FACT

We rely on the Examiner's findings set forth in the Final Rejection and the Examiner's Answer.

PRINCIPLES OF LAW

Claim Interpretation

The *claims* measure the invention. *See SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc). During examination, claims are to be given their broadest reasonable interpretation consistent with the specification, and the language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Amer. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted). The Office must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification. *Id.* (citations omitted). The scope of a claim cannot be narrowed by reading disclosed limitations into the claim. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

ANALYSIS

Section 102(b) rejection of claims 1, 2, 4, 6, 7, 9, and 11-14

The Examiner finds that Ehlers describes an "energy consumption profile" within the meaning of claim 1. Ans. 4-5, 14, 20-22. Appellants contend that the "energy consumption profile" recited in claim 1 refers to the future power consumption of an appliance over time. Appellants also contend that Ehlers only discloses historical power consumption and current power consumption, but not future power consumption. App. Br. 11-12;

Reply Br. 3-5. However, the Examiner finds that “future power consumption” is not recited in claim 1. Ans. 21-22. Appellants respond that the “future energy consumption profiles” recited in claim 5 require the “energy consumption profile” of claim 1 to be “forward looking.” Reply Br. 4.

We agree with the Examiner’s findings. Appellants have not provided a definition of “energy consumption profile” in claim 1 or in the Specification that excludes the historical and current power consumption described by Ehlers. The phrases “future power consumption” and “forward looking” are not recited in claim 1, and we find no basis for reading these phrases into claim 1. The “future energy consumption profiles” recited in claim 5 lack proper antecedent basis in claim 1 and therefore represent a new limitation introduced by claim 5. Appellants have not shown error in the Examiner’s findings that “assessing for each appliance an energy consumption profile of the one or more appliances corresponding to its setting” encompasses managing an energy consumption profile as described by Ehlers.

The Examiner finds that Ehlers describes “summing the energy consumption profiles” as recited in claim 1. Ans. 5, 17-19, 25-27. Appellants contend that Ehlers is incapable of describing the summing of energy consumption profiles, because the running total described by Ehlers is historically focused on current and past power consumption, rather than forward looking like the claimed invention. App. Br. 14-15.

Appellants’ contention appears based on the premise that Ehlers does not describe “forward looking” or “future power consumption” profiles, which we find unpersuasive as discussed above. Appellants have therefore

failed to show error in the Examiner's finding that Ehlers discloses "summing the energy consumption profiles" within the meaning of claim 1.

The Examiner finds that the load shedding of Ehlers describes "providing one or more new energy consumption profiles" within the meaning of claim 1. Ans. 5, 19-20. Appellants contend that the load shedding of Ehlers has nothing to do with providing new energy consumption profiles. App. Br. 15-16. However, Appellants do not provide any evidence or persuasive arguments to support this contention. Appellants have failed to distinguish the claimed "providing one or more new energy consumption profiles" from the load shedding described by Ehlers.

Appellants have not provided separate arguments for the patentability of claims 2, 4, 6, 7, 9, and 11-14, but submit that claims 2, 4, 6, 7, 9, and 11-14 are allowable for the reasons given with respect to claim 1. App. Br. 17. Because we find the arguments for claim 1 unpersuasive, we sustain the § 102(b) rejections of claims 2, 4, 6, 7, 9, and 11-14.

Section 103(a) rejection of claims 3 and 8

Appellants contend that the systems described by Culp and Ehlers are incompatible and that the Examiner has thus failed to identify any motivation to combine these references. In particular, Appellants contend that Culp teaches sequencing on and off times of a load based on the magnitude of power consumption and even spacing of on and off times, and that Ehlers determines on and off times by other factors. Appellants conclude that the systems of Culp and Ehlers are incompatible, because their combination would very likely lead to uneven load selection and on and off time sequencing. App. Br. 21-22. The Examiner finds that Ehlers describes

several alternative criteria for determining on and off times of a load, none of which exclude using on and off criteria of Culp. Ans. 35. The Examiner further finds that using the on and off criteria of Culp in the energy management system of Ehlers would have been obvious to a person of ordinary skill at the time of invention. Ans. 8-9.

We agree with the Examiner. Appellants have provided no evidence to show that replacing the on and off criteria of Ehlers with the on and off criteria of Culp would lead to uneven load selection and on and off time sequencing. Appellants have also provided no evidence to show that replacing the on and off criteria of Ehlers with the on and off criteria of Culp was “uniquely challenging or difficult for one of ordinary skill in the art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007).

Appellants contend that the combination of Ehlers and Culp does not teach establishing power consumption profiles, summing the profiles, and generating new power consumption profiles as recited in claim 3. App. Br. 22-23. Appellants’ contention appears based on the premise that claim 1 requires a forward looking future power consumption profile, and Ehlers does not disclose a forward looking future power consumption profile. We find this contention unpersuasive as discussed in the analysis of claim 1.

Appellants conclude their arguments in support of claims 3 and 8 by quoting claim language and alleging that the combination of references does not render the claims obvious, without addressing any of the Examiner’s findings in support of why the combination does so. App. Br. 23-24. Under the applicable Board rule, reproducing claim language is not an argument for separate patentability of the claim. *See* 37 C.F.R. § 41.37(c)(1)(vii) (“A

statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.”). We sustain the § 103(a) rejections of claims 3 and 8.

Section 103(a) rejection of claims 5 and 10

Appellants contend that the Examiner has failed to identify any reason for combining Ehlers and Nierlich. In particular, Appellants contend that a person of ordinary skill at the time of invention would not have modified the system of Ehlers to include the teachings of Nierlich, because both Ehlers and Nierlich utilize energy prices. App. Br. 26-27. The Examiner finds that a person of ordinary skill in the art at the time of invention would have modified the energy management system of Ehlers to include the future energy consumption profiles of Nierlich for the benefit of anticipating demand peaks and curtailment scheduling as taught by Nierlich. Ans. 12.

Appellants have failed to provide evidence or persuasive argument to rebut the Examiner’s reason for combining Ehlers and Nierlich.

Appellants contend that even if Ehlers and Nierlich were combined, the combination would not teach summing power consumption profiles or providing new energy consumption profiles. App. Br. 27-28. Appellants’ contention appears based on the premise that claim 1 requires a forward looking future consumption profile, and Ehlers does not disclose a forward looking future power consumption profile. We find this contention unpersuasive as discussed in the analysis of claim 1.

Appellants conclude their arguments in support of claim 5 by quoting claim language and alleging non-obviousness of the claim over the combination of references, without addressing any of the Examiner’s

findings in support of why the combination demonstrates the obviousness of the claimed subject matter. App. Br. 27-28. Appellants make similar broad allegations with respect to claim 10, without addressing the Examiner's findings in support of the proffered combination. *Id.* at 28-29. We therefore find Appellants' remarks unpersuasive in showing error in the Examiner's rejection. We sustain the § 103(a) rejections of claims 5 and 10.

CONCLUSIONS OF LAW

(1) Appellants have not shown that the Examiner erred in finding that Ehlers describes an "energy consumption profile" as recited in claim 1.

(2) Appellants have not shown that the Examiner erred in finding that replacing the on and off criteria of Ehlers with the on and off criteria of Culp was obvious to one of ordinary skill at the time of invention.

(3) Appellants have not shown that the Examiner erred in finding that modifying the energy management system of Ehlers to include the future energy consumption profiles of Nierlich was obvious to one of ordinary skill in the art at the time of invention.

DECISION

The rejection of claims 1, 2, 4, 6, 7, 9, and 11-14 under 35 U.S.C. § 102(b) as being anticipated by Ehlers is affirmed.

The rejection of claims 3 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Ehlers and Culp is affirmed.

The rejection of claims 5 and 10 under 35 U.S.C. § 103(a) as being unpatentable over Ehlers and Nierlich is affirmed.

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Application 10/757,891

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED

msc

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